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ABSTRACT

One of a series of secondary level teaching units presenting case studies with pro and con analyses of particular legal problems, the document presents a student's lesson plan, a teacher's lesson plan, and a lawyer's lesson plan designed to expose students to the basic concepts of "ownership" of personal property and how courts decide in favor of one party or another when one of the parties has possession of the property. The units provide students with an opportunity to re-examine their notions about ownership of found articles and to hold an open-ended discussion of the ethical and moral questions involved in the sayings, "possession is nine-tenths of the law" and "finders keepers, losers weepers." Although similar in content, the student and teacher lesson plans are presented separately to facilitiate individual or small group work by students and to provide teachers with additional background information. Prior to a lawyer's visit to the classroom, students examine case studies and view a film. Students then read "The Case of the Old Woman Meteorite" and participate in subsequent discussion. Teacher materials include readings on court cases and the court system and a simplified view of federal and California court structures. The lawyer's lesson plan provides further discussion of the case studies, questions concerning the resolution of disputes, hypothetical cases, and information about actual court cases. (LH)

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FINDERS KEEPERS

Property Rights of a Finder

A Student's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1977

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FINDERS KEEPERS
(Property Rights of a Finder)

STUDENT'S LESSON PLAN

INTRODUCTORY UNIT #1

How do you feel about the statements, "Possession is nine-tenths of the law," and "Finders keepers, losers weepers"? Do you feel that this is the law? That these statements should be the law? Why? Discuss your reasoning with the class.

Read the following hypothetical cases. Discuss the questions relating to each case.

CASE 1

Suppose you bought a "used car". A few weeks later, when you were driving with several of your friends, one of them, Mary, dropped some change in the back seat. As she was poking around trying to find it, she found a ring wedged into the back seat.

QUESTIONS

A. Who do you think should keep the ring? Mary? You? The person you bought the car from?

B. Would you feel differently if you had bought the car from a used car dealer? A private person through an ad in the papers? A personal friend? Should it?

CASE 2

Suppose you are shopping in a neighborhood store and find a money clip holding a wad of bills on the floor in a corner.

QUESTIONS

A. What should you do? What do you think your rights are to the money? The storekeeper's rights? The original owner's rights?

B. Would your answer be different if you were the finder? The storekeeper? The original owner?

C. What do you think the law requires you to do? Why?

D. Do you think it is "good common sense" to resolve this kind of case on the basis of "Finders keepers, losers weepers"?

CASE 3

On his way home from work one morning, Jacob Small finds a canvas bag lying at the side of the road. Opening it he finds it is filled with money. When he gets home he counts the money. There is over $150,000 in small bills! Jacob has never seen so much money in his life. He works as a janitor at night. His wife works. He has five children.

QUESTIONS

A. Is the money Jacob's because he found it? Why? Why not?

B. Even if Jacob believes he has the right to keep the money, should he report it to the police? Why?

C. Should the facts of Jacob's life have any influence on the decision he makes about the money? Why? Why not?

D. If you were Jacob, what would you do? Why?

E. If nobody claims the money, does Jacob have a legal claim to it?

FINDERS KEEPERS

INTROUCTORY UNIT #2

After viewing the film, "Clubhouse Boat", discuss the incidents that occur in this film from the point of view of "Finders keepers," and what your views are about possession of someone else's property which has been "found".

QUESTIONS

A. In the two instances that Tommy finds he has been overpaid, should he have kept the money? Why? Why not?

B. Would you say the phrases, "Finders keepers, losers weepers" and "Possession is nine-tenths of the law", apply in these instances? What are your reasons?

C. When the lady with the child overpays Tommy, should he have told his boss? Would the extra money belong to the druggist? Should the druggist return it to the lady? Give it to Tommy as a tip? Put it in his cash register?

D. Do you think that in the instance of the few cents the lady overpays, it is okay for Tommy to keep the money because of the amount? Because she didn't tip him? Is there a difference in the fact that Mr. Gover overpaid by $5.00?

E. Do you think Tommy would have acted differently if his friends hadn't put so much pressure on him? Why?

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* "Clubhouse Boat", Churchill Films, Los Angeles, California. Available from Constitutional Rights Foundation and Audio-Visual Section of Los Angeles City and County Schools.

FINDERS KEEPERS

LAWYER-IN-THE-CLASSROOM UNIT

Read the case carefully and consider all the facts. Study the questions so that you can discuss the case with the lawyer.

CASE

Andy, a high school student, liked to look for good value in "old stuff" at garage sales in his neighborhood. He would buy old furniture for a low price; fix it up and repaint it; and resell it to local antique or furniture stores at a profit.

One time he found an old chest of drawers at Mr. Baker's garage sale and bought it for $10. He took it home to work on it and discovered an old postage stamp wedged inside the frame of the chest between two drawers. He took it to a neighborhood stamp shop and was told it was a rare stamp and was worth $100.

Mr. Baker later learned of the circumstances and claimed the stamp from Andy.

QUESTIONS

A. If you were Andy's lawyer, how would you argue for his right to keep the stamp?

B. If you were Mr. Baker's lawyer, what arguments would you make for his right to have the stamp?

C. How would you feel if you were the finder? The original owner?

D. How would you feel if Andy were poor and Mr. Baker were rich? Should it make a difference?

E. How would you resolve the dispute? Why?

FOLLOW-UP UNIT

Read the "Case of the Old Woman Meteorite", keeping in mind the information you gained from the discussion with the lawyer on rights of a finder. Discuss the questions with the class, applying the law to your reasoning.

"THE CASE OF THE OLD WOMAN METEORITE"

While searching for a lost Spanish gold mine in the California desert near Twenty-nine Palms, three young men came upon a large rock that was somehow different from the tan and gray boulders that littered the floor of a canyon in the Old Woman Mountains where they were exploring.

Mike Jendruczak, one of the treasure seekers, who knew something about geology, was attracted by the reddish brown and black rock and went to look it over. Using a small tool he tapped the rock. He became very excited and called his teammates. "I'm pretty sure this is a meteorite," he said. "I've seen pictures of meteorites in school and I've seen them in museums. We've made a find! This is worth a fortune!"

For the next few months, the three men gave a great deal of thought about what to do with their find. They considered making a movie for television, of selling pieces to scientists, all kinds of ideas.

What they finally did was to send chips from the meteorite to the Griffith Observatory and to Prof. John T. Wasson, a UCLA chemist and meteorite expert, for analysis. Wasson immediately recognized the sample as having come from a rare type of meteorite known as "Type II".

Soon after this, Dr. Roy S. Clarke, curator of meteorites for the Smithsonian Institution in Washington, D.C., heard about the "Old Woman" meteorite and came to California to claim title to the big rock. The Smithsonian's claim was based on the fact that the meteorite was found on federal land and, therefore, belonged to the government. Professor Wasson, representing California scientists and museum officials, said it was found in California and should remain in California. The three explorers said the meteorite belonged to them because after having found it, they had filed a mining claim to the chunk of rock.

QUESTIONS

A. Do you think that a "find" involving a natural phenommenon such as the meteorite should belong to the finder or to the government? Explain your answer. Would you feel the same if the meteorite had not been found on government land? Why? Why not?

B. Would you think the same if the individual found a precious mineral or gem stones on government land? Why? Why not?

C. Do you think a finder should be rewarded or have some kind of share in the value of a find such as the meteorite?

D. Say you hired a ship to go into the Caribbean to hunt for the treasures of old sunken Spanish ships, and found such a ship with gold and silver, and ancient works of art from the Indian cultures of Mexico. Should the treasure belong to the finder? Why? Why not? You are an American citizen but the ship was found off the coast of Mexico. Who has claim to the treasure? Spain? United States? Mexico? You?

E. Do you believe governments should have laws about ownership of found property to which prior ownership cannot be established? Why? Why not? Should the found property automatically belong to the finder? How does a finder establish ownership?

F. Compare the issues involved in the case of the found postage stamp with the case of the "Old Woman" meteorite. What differences do you find in the circumstances?

FINDERS KEEPERS

Property Rights of a Finder

A Teacher's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1977

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FINDERS KEEPERS
(Property Rights of a Finder)

TEACHER'S LESSON PLAN

INTRODUCTORY UNIT #1

Instructions For The Teacher

To provide the students the opportunity to reexamine their notions about ownership of found articles, hold an open-ended discussion of the statement, Possession is nine-tenths of the law", and "Finders Keepers, Losers Weepers". To initiate discussion, ask the students whether or not this should be the law and if so, why?

Copy and distribute the materials from the Student's Lesson Plan, Introductory Unit #1. After the above discussion, ask the class to read the cases and discuss the Questions.

CASE 1

Suppose you bought a "used car". A few weeks later, when you were driving with several of your friends, one of them, Mary, dropped some change in the back seat. As she was poking around trying to find it, she found a ring wedged into the back seat.

QUESTIONS

A. Who do you think should keep the ring? Mary? You? The person you bought the car from?

B. Would you feel differently if you had bought the car from a used car dealer? A private person through an ad in the papers? A personal friend? Should it?

CASE 2

Suppose you are shopping in a neighborhood store and find a money clip holding a wad of bills on the floor in a corner.

QUESTIONS

A. What should you do? What do you think your rights are to the money? The storekeeper's rights? The original owner's rights?

B. Would your answer be different if you were the finder? The storekeeper? The original owner?

C. What do you think the law requires you to do? Why?

D. Do you think it is "good common sense" to resolve this kind of case on the basis of "Finders keepers, losers weepers"?

CASE 3

On his way home from work one morning, Jacob Small finds a canvas bag lying at the side of the road. Opening it he finds it is filled with money. When he gets home he counts the money. There is over $150,000 in small bills! Jacob has never seen so much money in his life. He works as a janitor at night. His wife works. He has five children.

QUESTIONS

A. Is the money Jacob's because he found it? Why? Why not?

B. Even if Jacob believes he has the right to keep the money, should he report it to the police? Why?

C. Should the facts of Jacob's life have any influence on the decision he makes about the money? Why? Why not?

D. If you were Jacob, what would you do? Why?

E. If nobody claims the money, does Jacob have a legal claim to it?

INTRODUCTORY UNIT #2

To engage the students in a discussion of the ethical and moral questions involved in the statement, "Finders keepers, losers weepers" and "Possession is nine-tenths of the law", and to give them an opportunity to consider their ideas of what the law is concerning a finder's rights, show the film, "Clubhouse Boat"*, to your class. After viewing the film, have the students discuss the following questions concerning the film.

QUESTIONS

A. In the two instances that Tommy finds he has been overpaid, should he have kept the money? Why? Why not?

B. Would you say the phrases, "Finders keepers, losers weepers" and "Possession is nine-tenths of the law", apply in these instances? What are your reasons?

C. When the lady with the child overpays Tommy, should he have told his boss? Would the extra money belong to the druggist? Should the druggist return it to the lady? Give it to Tommy as a tip? Put it in his cash register?

D. Do you think that in the instance of the few cents the lady overpays, it is okay for Tommy to keep the money because of the amount? Because she didn't tip him? Is there a difference in the fact that Mr. Gover overpaid by $5.00?

E. Do you think Tommy would have acted differently if his friends hadn't put so much pressure on him? Why?

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* "Clubhouse Boat", Churchill Films, Los Angeles, California. Available from Constitutional Rights Foundation and Audio-Visual Section of Los Angeles City and County Schools.

LAWYER-IN-THE-CLASSROOM UNIT

Copy and distribute the Lawyer-in-the-Classroom materials in the Student's Lesson Plan. Ask the students to read the case carefully and study the questions so that they are prepared to discuss and analyze the case with the lawyer.

CASE

Andy, a high school student, liked to look for good value in "old stuff" at garage sales in his neighborhood. He would buy old furniture for a low price; fix it up and repaint it; and resell it to local antique or furniture stores at a profit.

One time he found an old chest of drawers at Mr. Baker's garage sale and bought it for $10. He took it home to work on it and discovered an old postage stamp wedged inside the frame of the chest between two drawers. He took it to a neighborhood stamp shop and was told it was a rare stamp and was worth $100.

Mr. Baker later learned of the circumstances and claimed the stamp from Andy.

QUESTIONS

A. If you were Andy's lawyer, how would you argue for his right to keep the stamp?

B. If you were Mr. Baker's lawyer, what arguments would you make for his right to have the stamp?

C. How would you feel if you were the finder? The original owner?

D. How would you feel if Andy were poor and Mr. Baker were rich? Should it make a difference?

E. How would you resolve the dispute? Why?

FOLLOW-UP UNIT

To assess the effect of the lawyer's visit on both the understanding of this area of law and the attitudes of the students toward found objects, have the students read the "Case of the Old Woman Meteorite" and discuss the questions that follow.

Copy and distribute the Materials from the Follow-Up Unit in the Student's Lesson Plan.

"THE CASE OF THE OLD WOMAN METEORITE"

While searching for a lost Spanish gold mine in the California desert near Twenty-nine Palms, three young men came upon a large rock that was somehow different from the tan and gray boulders that littered the floor of a canyon in the Old Woman Mountains where they were exploring.

Mike Jendruczak, one of the treasure seekers, who knew something about geology, was attracted by the reddish brown and black rock and went to look it over. Using a small tool he tapped the rock. He became very excited and called his teammates. "I'm pretty sure this is a meteorite," he said. "I've seen pictures of meteorites in school and I've seen them in museums. We've made a find! This is worth a fortune!"

For the next few months, the three men gave a great deal of thought about what to do with their find. They considered making a movie for television, of selling pieces to scientists, all kinds of ideas.

What they finally did was to send chips from the meteorite to the Griffith Observatory and to Prof. John T. Wasson, a UCLA chemist and meteorite expert, for analysis. Wasson immediately recognized the sample as having come from a rare type of meteorite known as "Type II".

Soon after this, Dr. Roy S. Clarke, curator of meteorites for the Smithsonian Institution in Washington, D.C., heard about the "Old Woman" meteorite and came to California to claim title to the big rock. The Smithsonian's claim was based on the fact that the meteorite was found on federal land and, therefore, belonged to the government. Professor Wasson, representing California scientists and museum officials, said it was found in California and should remain in California. The three explorers said the meteorite belonged to them because after having found it, they had filed a mining claim to the chunk of rock.

QUESTIONS

A. Do you think that a "find" involving a natural phenommenon such as the meteorite should belong to the finder or to the government? Explain your answer. Would you feel the same if the meteorite had not been found on government land? Why? Why not?

B. Would you think the same if the individual found a precious mineral or gem stones on government land? Why? Why not?

C. Do you think a finder should be rewarded or have some kind of share in the value of a find such as the meteorite?

D. Say you hired a ship to go into the Caribbean to hunt for the treasures of old sunken Spanish ships, and found such a ship with gold and silver, and ancient works of art from the Indian cultures of Mexico. Should the treasure belong to the finder? Why? Why not? You are an American citizen but the ship was found off the coast of Mexico. Who has claim to the treasure? Spain? United States? Mexico? You?

E. Do you believe governments should have laws about ownership of found property to which prior ownership cannot be established? Why? Why not? Should the found property automatically belong to the finder? How does a finder establish ownership?

F. Compare the issues involved in the case of the found postage stamp with the case of the "Old Woman" meteorite. What differences do you find in the circumstances?

Information For The Teacher

The Smithsonian Institution's claim to the meteorite derives from the 1906 Antiquities Act as contained in Paragraphs 431-33, Title 16, U.S.C.A.

"NATIONAL AND INTERNATIONAL MONUMENTS AND MEMORIALS

Cross References

Protection of timber upon national monuments from fire, disease, or insect ravages, see section 594 of this title.

§ 431. National monuments; reservation of land; relinquishment of private claims

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

June 8, 1906, c. 3060, § 2, 34 Stat. 225.

§ 432. Permits to examine ruins, excavations, and gathering of objects; regulations

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing

the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this section and sections 431 and 433 of this title.

June 8, 1906, c. 3060, §§ 3, 4, 34 Stat. 225.

§ 433. American antiquities

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situate on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than $500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

June 8, 1906, c. 3060, § 1, 34 Stat. 225.

West's Federal Forms

Fine, see § 7535.

Notes of Decisions

1. Purpose

This section, prohibiting inter alia, the appropriation of 'any object of antiquity' situated on government lands, was intended to protect American Indians from those who would appropriate, excavate or injure any historic monument or object of 'antiquity"' situated on Indian lands. U.S. v. Diaz, D.C.Ariz. 1973, 368 F.Supp. 856."

The three men who found the meteorite have filed a claim to it under the provisions of the 1872 Mining Act, which reads:

"That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States . . . . and, according to the local customs or rules of miners, in the several mining-districts, so far as the same are applicable and inconsistent with the laws of the United States.

"Sec. 3. That the locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, ... so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with said laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, ledges . . . ."

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

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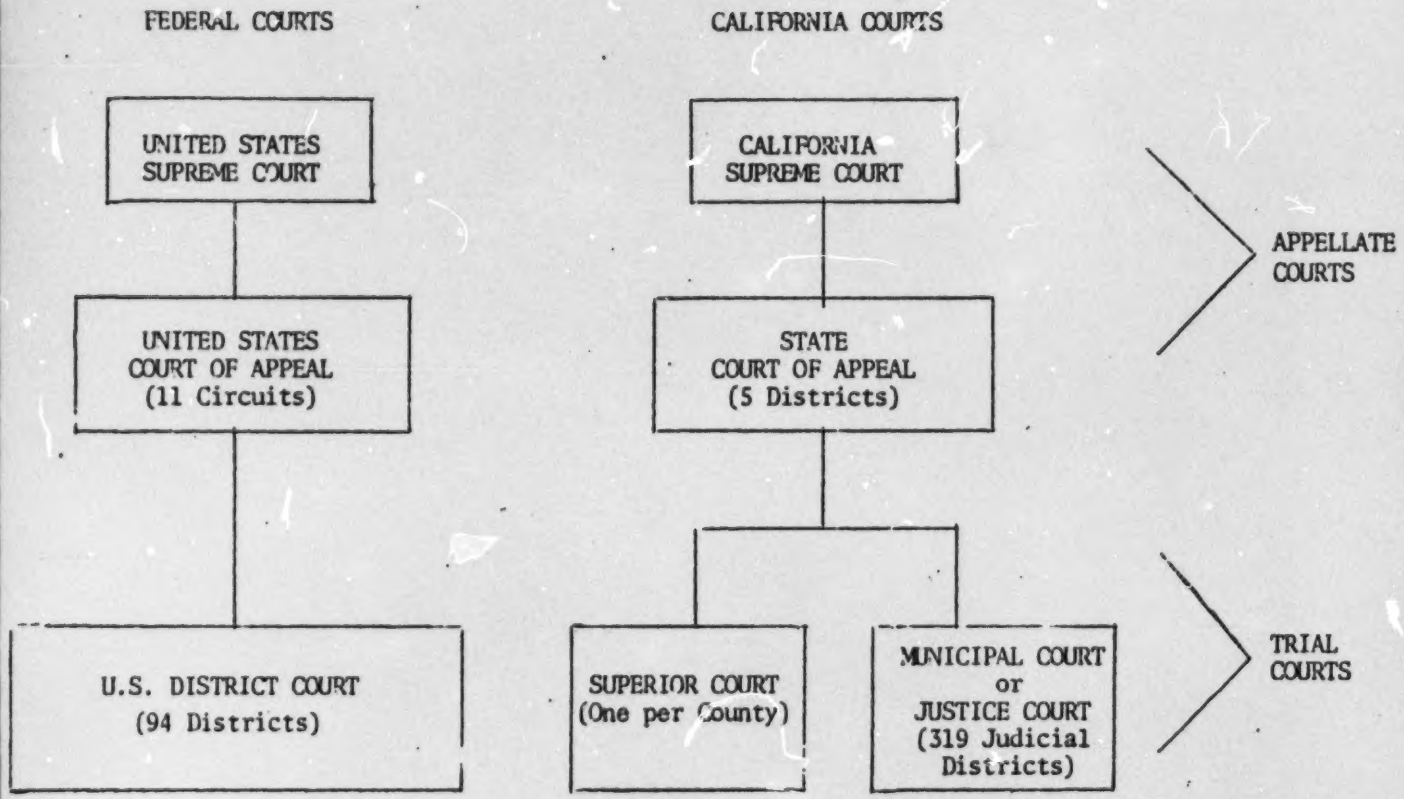
* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.


FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
CALIFORNIA SUPREME COURT
APPELLATE COURTS
UNITED STATES COURT OF APPEAL (11 Circuits)
STATE COURT OF APPEAL (5 Districts)
U.S. DISTRICT COURT (94 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

"FINDERS KEEPERS"

Property Rights of a Finder

A Lawyer Lesson Plan
Prepared by Bruce L. Gitelson, 1976

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FINDERS KEEPERS
(Property Rights of a Finder)

LAWYER'S LESSON PLAN

Area of Law: Property

Specific Topic: Property Rights of a Finder:
Is Possession 9/10ths of the Law?

Objective: To acquaint students with basic concepts of "ownership" of personal property and how courts decide in favor of one party or another when one of the parties has possession of the property

CASE

Andy, a high school student, liked to look for good value in "old stuff" at garage sales in his neighborhood. He would buy old furniture for a low price; fix it up and repaint it; and resell it to local antique or furniture stores at a profit.

One time he found an old chest of drawers at Mr. Baker's garage sale and bought it for $10. He took it home to work on it and discovered an old postage stamp wedged inside the frame of the chest between two drawers. He took it to a neighborhood stamp shop and was told it was a rare stamp and was worth $100.

Mr. Baker later learned of the circumstances and claimed the stamp from Andy.

QUESTIONS AND DISCUSSION

A. Who do you think should have the legal right to get the stamp? Why?

Ask the students to discuss the principal arguments and competing interests of Andy and Mr. Baker. The instructor might make arguments for either side not brought out by the students, and ask for student evaluation, agreement or disagreement with the particular argument made.

The following are several arguments (including some spurious arguments which might be made for purposes of discussion) on each side and discussion and suggestions for questions about each argument.

B. If you were Andy's lawyer how would you argue for his right to keep the stamp?

Andy should get the stamp because:

1. Andy has present possession of the stamp.

Courts give possession great weight in determining the rights between two conflicting claimants to own property. As stated in the landmark English case, Armory v. Delamire, Kings Bench, 1722, the proposition is often asserted that "the finder (the possessor) has title against all but the true owner". Rewarding possession is, in essence, rewarding the efforts and luck of the finder, but note that even the old English proposition generally recognizes the superior rights in a prior "true owner" (i.e., one who has previously acquired the property intentionally, as by purchase or gift). Nevertheless, possession is the beginning of the analysis of ownership, but, as discussed below, several other factors enter into the court's decision as to ownership.

Why should "possession" be given such weight? (Possible answers to this question may turn upon the same factors discussed below in connection with other questions: e.g., furthering reasonable expectations and avoiding violence.)

2. Andy has reasonable expectations of ownership, and Baker has induced these expectations by his conduct or lack of it.

This is an application of a social policy to fulfill reasonable expectations induced by the conduct of another and to force the other to abide by his conduct, even if unintentional, which gives rise to reasonable expectation in third parties. Suppose, for example, that Baker's sign at the garage sale said, "All Sales Final. Take 'Em as You Find 'Em." Andy could reasonably conclude from these terms, whether or not intended by Baker, that whatever he found in the chest was his.

Do you agree that Andy's reasonable expectations of ownership would grow the more time passed between the garage sale and the time Baker appeared to claim the stamp? Why? The relationship between the time factor and reasonable expectations is considered further below.

3. Andy "needs" the stamp more than Baker does.

This is a very serious and controversial, and to many, an attractive claim to ownership; namely, the one who "needs" it most should get it. But how would the judge really determine who "needs" the stamp the most? Would the judge have to determine how rich or poor Mr. Baker was, as well as Andy and his parents? Would he have to ask questions about how hard each person works; who they have to support; whether or not they are "good guys"?

In short, one might argue that judges are probably not well equipped to answer this type of question, and it may quickly lead to arbitrary decisions based on the judge's likes and dislikes, as discussed in Question C(1) below. Accordingly, we have traditionally left general questions of social "needs" to the legislature or the Congress, but one might assume that this consideration could well influence a judge's thinking as a person. Should it?

C. If you were Mr. Baker's lawyer, what arguments would you make for his right to have the stamp?

Mr. Baker should get the stamp because:

1. Baker is older and bigger than Andy (or even Baker is a "nicer guy" or has red hair).

This argument is worth making, even if it is not brought up by a student, to bring out the generally perceived and almost intuitive feeling that personal characteristics of one of the contenders are not a "relevant" or "fair" basis for deciding between parties. Decisions based on these factors tend to appear and be <u>arbitrary</u>, and violate the almost common sense notion that there ought to be "<u>rules</u>" (rules of law) for deciding ownership (and other rights) between contending parties, independent of the particular parties involved. This basis for decision also encourages people to attempt to "influence" the party deciding the issue through means not related to the merits of the conflicting claims (e.g., by bribing him, or using political or other pressures to obtain a favorable decision).

The important question then becomes, if the rules for determining ownership are not to be based on the personal characteristics of the parties, or the prejudices of the judge, what are the relevant considerations? What "rules" would you want judges to follow? What factors should they consider?

2. Adults prevail over minors because minors cannot own property.

This argument is a blend of the one above and a prevalent misconception that minors have no rights at all. It is worthwhile to bring out here that legally a minor has the same right to acquire and hold property as an adult, subject to certain privileges and immunities legally established for his benefit and protection, and to certain limitations with respect to his parent's rights. See 37 Cal. Jur.2d, "Parent and Child", at Sec. 58, page 224.

Therefore, Baker could not prevail over Andy simply because Baker is an adult and Andy is a minor.

3. Baker did originally intentionally (knowingly) acquire the stamp (whether by purchase, gift or merely by finding it) and simply misplace it in the chest.

If this statement is true as a matter of fact, it is the strongest (and probably dispositive) argument in Baker's favor. It is an expression of the common law proposition that in general an intentional acquirer of property by lawful means has superior rights as against everybody and that such rights are not destroyed by subsequent loss of the property, absent some very strong countervailing social policy. This legal proposition is supportable upon the basis of several important social policies: (i) an intentional possessor is most likely to use the property for the benefit of society--(i.e., utilization of resources) and should therefore be encouraged to acquire and use it lawfully; (ii) he will also have "reasonable expectations" of rights to keep or recover it, even if it is misplaced or lost for a short time; and (iii) historically, (and even today, to some extent) he was likely to <u>fight</u> to keep it or get it back (a result that the law seeks to avoid). These are basic social policies underlying many areas of our laws, and should be carefully brought out and discussed.

Note here that it is asserted that even simple prior intentional possession by having found the stamp (as distinguished from purchasing it or receiving it as a gift) will be protected, even where the stamp was subsequently lost. Suppose,

however, that the loss occurred some years ago, and the prior possessor discovers the stamp after Andy has for some time held it, cleaned it up, and taken other efforts with regard to it. One would expect the court to lean more toward asserting Andy's right to keep the stamp (rewarding Andy's use, efforts and consequent reasonable expectations, and penalizing Baker's loss and delay in finding) by perhaps using such terms as that Baker had "abandoned" the property, or that "time had run out" (statute of limitations) for Baker to recover it.

If students do not raise this argument, the lawyer might ask additional questions such as:

"Should it make a difference whether Mr. Baker ever knew he had the stamp before Andy found it? What if he had knowingly acquired the stamp by buying it, getting it as a gift or even finding it, and then had misplaced it? What if it belonged to some other third person and Mr. Baker never knew he had had the stamp?"

"Should it make a difference when Mr. Baker claimed it? What if a long time had passed since Andy had found it?"

4. Baker had the stamp first (i.e., the frequent claim: "I had it first."

This is an unsophisticated variation of the argument in "3" above. It is sometimes used to decide between the parties when there is no "better reason" to choose between them (e.g., the common law rule of two competing legal titles from the same grantor). Its main virtue may be that it is not determined by the individual characteristics of the parties (so it does not seem so unfair) and at least it is a rule easy to state and to understand, which are good attributes for a rule to have so that people can follow it. (This is another frequently asserted policy consideration where the rule of law is one that people are apt to govern their conduct by; but is this one of those rules?) This first-in-time rule may have some common sense appeal, but, without articulating the more sophisticated policy reasons in "3" above, this argument's force is often overcome by the force of other arguments.

5. When he sold the chest Baker did not intend to sell the stamp to Andy, and Andy did not intend to buy it from Baker.

   This is a serious argument upon the premise that the intention of the parties is a relevant, and indeed, very important factor in determining ownership where two claimants have dealt together about the object in question. As noted below, this type of case is often disposed of by the courts based upon a "contract" analysis of what the parties intended. At least one good social policy emerges here and might be written down on the blackboard as an important consideration in deciding ownership between two parties dealing together:

   "If the parties involved agree on whom they intend to own the property, the law should support their common intention."

   Notice the relationship of this expression to fulfilling reasonable expectations and avoiding violence.

   (It should be emphasized that this is a very strong, and possibly conclusive factor, but it is still one of many arguments which a court would consider together in deciding who should "own" property as between two claimants.)

   Here, however, the argument is more about what Andy and Baker didn't intend. Is the argument still as strong? What if Andy did intend to get everything in the chest, and Baker did not intend to sell anything but the chest? What if, as is most likely here, neither of them ever thought about the matter?

   The instructor might also raise here the issue of how one would determine what Andy and Baker intended, and who should have the burden of proving the intent of one or the other.

6. Andy "got something for nothing".

   This is the argument that Andy has a windfall--i.e., he had no intent to acquire the stamp nor did he exercise any effort or make any payment to acquire the stamp--he "got something for nothing".

(If this argument is not raised, the instructor might ask: "If one party got something for nothing and the other party worked hard for it, who should get to keep it?")

This argument has most force where the claimant making the argument did make an effort, from which the other party benefitted unexpectedly. Here this windfall argument would seem to apply equally to Baker if he gets the stamp, assuming he did not buy or otherwise intentionally make efforts to acquire the stamp in the first place; so if he keeps it, he will probably have gotten something for nothing, too. (On the other hand, if Baker originally bought the stamp or otherwise made intentional efforts to obtain it, this argument will lend additional strength to his position.)

7. Baker should keep the stamp because it would be easier for the original owner to retrieve it from Baker.

This argument reflects a social policy to protect the ownership of the real "owner". Though it does not appear to decide the merits of whether Baker or Andy should get to keep the stamp permanently, this consideration has been the basis of decisions and modern statutory provisions, and has even been the basis of a decision between which of two finding claimants should own the property permanently. (See McAvoi v. Medina discussed in hypothetical on money found in barbershop.)

Do you agree that this policy should, however, serve only to allocate the interim possession of the property until sufficient time has passed to determine that the owner will not (or should not be able to) claim it, and thereupon the ownership rights should be determined by the other factors discussed above?

D. Ask the students how they would feel if the situation involved them, or someone they like or dislike.

E. What effect, if any, would and/or should the following factors have in resolving the dispute between Andy and Mr. Baker?

1. Prejudice;

2. Sympathy;

3. The relative needs of the parties;

4. Society's needs.

F. Ask the students how they would resolve the dispute and why.

RESOLUTION OF THE DISPUTE OR DILEMMA

A. Resolution by courts in absence of statutory solutions.

1. Assuming Mr. Baker originally intentionally acquired the stamp:

In the several relatively old cases which have considered analogous fact situations, where a party in Baker's position has previously intentionally taken possession of the property, the courts have generally decided in favor of one party or the other upon a contract analysis looking to the agreement (the intention) of the seller and the purchaser in light of surrounding circumstances. Therefore, if the terms of the garage sale appeared to contemplate transfer of the chest "with everything in it", Andy would prevail, even though Baker was unaware of the value contained in the chest. On the other hand, if there was no indication that Baker intended to transfer anything other than the chest, probably Baker would prevail. See: Annotation: "Title to Unknown Valuables Secreted in Articles Sold", 4 A.L.R.2d 318.

For example, in American Nat. Bank v. West, 212 S.W.2d 683, 4 A.L.R.2d 314 (Ten. 1948), the purchaser of a box of old clothes at an auction of a decedent's property was held not to have acquired the right to two valuable rings which were in the pocket of a bathrobe included in the box. The evidence indicated that none of the parties were aware of the presence of the rings, and the court decided that the parties "intended to deal with a box of clothes, and not the box and whatever its contents might be".

Nevertheless, the American Nat. Bank case and the other cases in the initial section of the annotation dealt with concealed property which undoubtedly originally belong to (was intentionally acquired by) the seller or the party represented by the seller, and the annotation recognized that fact at page 321.

2. Assuming Mr. Baker did not originally intentionally acquire the stamp:

Section 3 of the annotation, beginning at 4 A.L.R.2d 321, appears to deal with cases more analogous to that of Andy and Baker, assuming that the secreted stamp really belonged to a third party, and Baker did not know of its existence. The discussion of the contest between a purchaser of a chattel containing secreted property and a subsequent finder evidences that the finder has generally prevailed, as entitled "to possession as against all the world . . . except the true owner".

Thus, in Durfee v. Jones, 4 A.L.R.2d at 321, a blacksmith (a finder in a position analogous to that of Andy) was allowed to keep money he found in a crevice in the wall of a safe which he had received from the owner (a prior unintentional possessor, in the position of Mr. Baker), who had in turn purchased it from a third party without knowledge of the presence of money. The seller of the safe sought to recover the money on the basis of his possession of the safe and through it, his prior possession of its unknown contents, as against the finder. The court decided against him. Therefore, the court would probably decide for Andy if the stamp had not originally belonged to Baker. If, on the other hand, the stamp had originally been intentionally acquired by Baker and then mislaid, the court would probably decide for Baker unless the terms of the sale of the chest were broad enough to include its contents, whether or not known to Baker, or Baker had delayed to such an extent in asserting his claim that a statute of limitations or a concept of "abandonment" were applied.

B. Resolution through enactment of statutory solutions.

If the facts of this case occurred today in California, the resolution of the dispute would necessarily include reference to a set of statutory rules in California Civil Code Sections 2080 through 2080.9, enacted by the California legislature in 1967. The emphasis of this modern solution is to provide for a reasonable means of finding the "true owner" of the property, and if he does not appear, to give the property to the finder, assuming he has acted according to these statutory rules. Results in states other than California may be different.

Because one finds lost or misplaced property, he is not bound to take custody of it and hold it for the owner, but if he does take possession of it, he thereafter holds it legally for the benefit of the owner, and in that case he must exercise at least ordinary care to preserve the property. See, California Civil Code Section 1862; 1 Cal.Jur.3d, "Abandoned Property" at Sections 18-24.

The finder who takes possession of lost or misplaced property (including saving any domestic animal from drowning or starvation) must, within a reasonable time, inform the owner, if the owner is known to him, and return the property to the owner without compensation except a reasonable charge for saving and taking care of the property. California Civil Code Section 2080.

If the owner is unknown and if the property is of a value of $10 or more, the finder must within a reasonable time turn the property over to the local police department, or to the sheriff's department if it is found outside of city limits, and make an appropriate statement describing the circumstances in which he found it.

The police or sheriff's department is obligated to notify the owner, if his identity is reasonably ascertainable, and if the owner appears within 90 days and "pays all reasonable charges" (which probably include the finder's reasonable charge referred to in Section 2080, as well as the charges of the police or sheriff's department), he is entitled to recovery of the property. If the value of the property is $25 or more, and no owner has appeared within 90 days after the finder has deposited the property with the police or sheriff's department, that department is obligated to publish a notice concerning the property in a newspaper or general circulation in the area. If after seven (7) days following publication of that notice, the owner does not appear and provided the finder pays the cost of publication, the finder is entitled to keep the property. If the value of the property is less than $25, there is no requirement of publication, and after the 90-day period the finder is entitled to own the found property. See California Civil Code Sections 2080.1-2080.3.

Failure to comply with these statutory requirements constitutes "theft" of the property under Section 485 of the California Penal Code:

"S 485. [Appropriation of lost property by finder: When theft]

"One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, is guilty of theft."

Therefore, under these California statutory provisions, it would appear again that, if Mr. Baker was not the "true owner" of the stamp, Andy, as the finder, would prevail over Mr. Baker. But, of course, the determination of whether Mr. Baker was the "true owner" will again require reference to available judicial decisions, such as those discussed above. Therefore these statutory provisions do not provide a complete answer to the dispute described above. They are more helpful, however, in certain of the additional hypotheticals, discussed below.

NOTE: Here it should be pointed out to the class that the foregoing is a statement about how the case would probably come out (i.e., a prediction about the result), but is not a normative judgment about whether that should be the result (i.e., does that predicted result "make sense").

ADDITIONAL HYPOTHETICALS AND DISCUSSION

The following additional hypotheticals are intended to further illustrate the application of the principles discussed above in other cases. They are phrased as one would address them to the class:

A. Should this be the result between Andy and Baker? Do these predicted results make sense, on the basis of the arguments previously made for each side? Does this decision seem fair?

Students should be encouraged to evaluate the wisdom of laws and decisions, at least as a beginning, on the basis of whether they appear to meet a common sense fairness test after thinking about them. If a law or decision does not meet the test of informed common sense, it ought to be looked at very carefully.

B. Assume that the dispute between Andy and Mr. Baker was decided in favor of Andy. Suppose a year or so later a similar dispute over a rare coin arose between Mr. Carter and Mike, two parties totally unrelated to Mr. Baker and Andy. Should Mike win the dispute with Mr. Carter based on the decision in the prior case between Andy and Mr. Baker? Should the prior decision have any effect at all on the judge deciding the dispute between Mike and Mr. Carter? Why or why not?

Suppose you knew the judge decided the Baker/Andy dispute in Andy's favor because he didn't like Mr. Baker. Would that affect your decision about whether the prior case should apply?

Suppose the dispute between Mike and Mr. Carter arose in a different state from that in which the dispute between Mike and Mr. Baker was decided. Does that fact affect your decision on the application of the prior case to the Mike/Carter dispute? Why or why not?

[This series of hypotheticals is intended to develop basic concepts of "precedent" and the "precedential effect" of prior decisions. In particular, it is intended to bring out the intuitive basic fairness notion that essentially similar cases ought to be decided similarly unless some very good reasons exist for not doing so.]

C. You have probably all heard the saying, "Finders keepers, losers weepers". Is this the law, based on the foregoing principles? Do you think that this should be the law? Why or why not?

D. You have probably all heard the saying, "Possession is nine-tenths of the law." Is it true? Should it be?

E. Suppose Andy and Charlie had gone to the garage sale together. Andy pulled out a drawer of the chest and, seeing the stamp, Charlie grabs it away. Who do you think is the rightful owner, as between Andy and Charlie? Why? Would you want to encourage conduct such as Charlie's? Why or why not?

F. Suppose Andy had in turn mislaid the stamp or dropped it on his way home, and that Charlie had found it. Who do you think would win between Andy and Charlie? Who should win?

The decisions between successive finders, particularly within a short period of time of each other, almost uniformly hold in favor of the previous finder. See Reisman, "Possession and the Law of Finders", 52 Harv. L.Rev. 1105 at 1110, n. 15. Note, therefore, that possession (which would favor the subsequent finder) does not necessarily prevail, and the courts tend to give some permanency to a prior intentional possession of the property against a subsequent finder. Do the policy reasons discussed above support this result?

G. What would you advise Andy to do at future garage sales in order to best protect his rights to any concealed property he might find?

A good answer to this question would be to advise Andy in each case to ask the garage sale owner in advance whether he intended to sell the garage sale items and their contents, whatever the contents might be, and whether or not known to the owner. If the owner said no, then Andy would not have any reasonable expectation of getting more than what he pays for. On the other hand, if the owner agreed to such terms in advance, Andy would appear to have the strongest argument to keep whatever he finds.

H. Suppose you are shopping in a neighborhood store and find a money clip with a wad of bills on the floor in a corner? What should you do? What do you think your rights are and should be to the money as between you and the person who lost the money? As between you and the storekeeper?

Who owns the found property as between the finder and the shopkeeper under the court-decided cases? In the old English case of Bridges v. Hawkesworth (1851), Bridges, the finder, was a traveling salesman who noticed a small parcel of bank notes on the floor of Hawkesworth's shop, which he requested that the shopkeeper hold for the owner. The shopkeeper advertised, and after three years had passed without discovery of the true owner, Bridges asked for return of the notes, upon offering to pay for the advertisements. He sued Hawkesworth when Hawkesworth refused to return the notes to him. The court there applied the general rule of Armory v. Delamire that the finder had a right to ownership against all the world, except the true owner. It disagreed with the shopowner's contention that the presence of the notes in a "public" part of defendant's shop gave him the rights to the notes as against the finder.

However, in McAvoi v. Medina (Mass. 1886), a customer in the defendant's barbershop picked up a wallet lying on the table, which he permitted the shopkeeper to retain for the true owner if he should return to claim it. When the owner had not appeared, the plaintiff customer demanded the wallet and when the shopkeeper refused to deliver it, the customer sued to recover the money contained in it. The court held for the shopkeeper first distinguishing the rule of Bridges v. Hawkesworth, above, on the ground that in Bridges, the property was "lost", whereas in the instant case the owner had simply "mislayed it"; and second, on the ground that ownership by the shopowner was more likely to secure the rights of the true owner, should he eventually return.

Does the first ground in the McAvoi decision really make sense, i.e., distinguishing between whether the true owner "lost" it or simply "mislaid" it for the purpose of deciding which of the two others would eventually get to keep it? Do you agree with the second ground of the decision? If you have decided that the true owner has abandoned it, or legally should have no further right to it, what sense does it make to say that one of two other claimants should get it, because the true owner might have an easier time finding it?

In any event, the majority of cases continue to favor the finder over the occupier of premises in which lost or mislaid property is found. See, for example, Hannah v. Peel 1.K.B. 509 (King's Bench Division, 1945). In August 1940, the plaintiff, a lance-corporal in the Royal Artillery, was stationed at a house owned by the defendant, which had never been occupied by him and which had been requisitioned for military use in the war. While in a bedroom of the house, used as a sickbay, the plaintiff discovered a concealed brooch above a window ledge, which he subsequently delivered to the police. Two years later, when the owner had not appeared, the police delivered the brooch to the defendant owner who subsequently sold it. The court applied the general rule of Armory, giving decision for the plaintiff finder.

These conflicting precedents are resolved in favor of the finder in California by virtue of the statutory provisions of the Civil Code quoted above, which, however, impose certain obligations upon the finder. Though prior to 1967, Section 1868 of the Civil Code appeared to permit the finder to relieve himself of these obligations (to take the property to the sheriff,

etc.) by placing the found property in storage with a responsible person "of good character", that provision has been repealed. Accordingly, it would not appear safe for a finder to leave the property in the custody of the shopowner, because that would appear to violate his obligations under Section 2080.1 of the Civil Code.

REFERENCES

California Civil Code Section 2080, et seq., "Lost and Unclaimed Property".

People v. Beach, 62 Cal.App.2d 803 (1944). Defendant convicted of grand theft for obtaining found property upon false pretenses from a finder. The Court asserted the principle that a finder of lost money has the right to possession and is entitled to retain it as against all the world except the true owner.

1 Cal.Jur.3d, "Abandoned Property", Sections 18-24.

Annotations: "Title to Unknown Valuables Secreted in Articles Sold", 4 A.L.R.2d 318-322.

Reisman, "Possession and the Law of Finders", 52 Harv. L.Rev. 1105-1134.

Casner and Leach, Cases and Text on Property, (1951), 32-38, 79-80.

FINAL DISCUSSION

The lawyer might set aside 5 to 10 minutes at the end to summarize the discussion. In so doing, the lawyer should make it clear that the main purpose of the discussion of principles with respect to the rights of finders was:

A. To demonstrate that what we call "title" or "ownership" is not as much a relationship to the physical property as it is the definition of the relationship of a person to a number of other persons with respect to that property;

B. To appreciate that the decision of a judge as to who of two or three claimants may own a piece of personal property will be made by considering many different factors and is not a matter of some immutable truth easily determined by reference to a statute book;

C. To suggest that none of us (including the students) should regard that determination as some secret process beyond our comprehension or ability, simply because we have not been trained as a lawyer or a judge; we should all regard the matter as one of applying informed common sense and fairness principles; and

D. To appreciate that concepts relevant to determining who ought to own a pice of property might include such considerations as:

1. Who will make the best use of the property;

2. What the intentions of the parties have been with respect to onwership of the property, if they have dealt with it between them;

3. Which party has the most reasonable expectations of ownership; which has acted most reasonably under the circumstances with respect to acquiring rights in the property and creating expectations of ownership in himself and in others;

4. Which party has exerted efforts to possess and use the property.

These are "socially relevant considerations" which should be recognized as parts of the basic structure of property and contract rights. Obviously attention to particular facts of the case is therefore essential, and generalizations in the abstract about who owns a piece of property are difficult and certainly dangerous to make. The question might properly be put in each case whether a person owned particular property with respect to whom or for what purpose.

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